

Privy Council Appeal No. 53 of 1936.
Oudh Appeal No. 15 of 1934.

The Commissioner, Lucknow Division, President of the
Managing Committee Kshattriya College, Lucknow

Appellant

v.

The Deputy Commissioner of Partabgarh as Manager
of Court of Wards Kalakankar Estate - -

Respondent

FROM

THE CHIEF COURT OF OUDH AT LUCKNOW

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 6TH MAY, 1937.

Present at the Hearing :

LORD MAUGHAM.

SIR LANCELOT SANDERSON.

SIR GEORGE LOWNDES.

[*Delivered by* LORD MAUGHAM.]

Out of respect to the Chief Court of Oudh, their Lordships think it desirable to state very shortly the reasons that have lead them to approve the minutes substantially in the terms which have been settled by junior counsel in regard to which they will humbly advise His Majesty to make a final order. They will preface their advice with an expression of opinion that there is no general charitable intent shown in this case and that the subscriptions were paid to the committee for the purpose of fulfilling a specific and well defined charitable purpose and that only. They think it right that they should in that respect express the opinion that they do, which agrees with that formed by the Chief Court of Oudh; and that, of course, was a very important matter which had to be discussed on the appeal.

It now remains to state why their Lordships have not been able to follow the decree which the Chief Court of Oudh made. The money having been paid over to the committee, a complete trust was created to apply the funds in carrying out the object mentioned. If the object has become impracticable, the subscribers, in view of the opinion referred to, have a clear right to the return of their subscriptions *pro rata*, subject only to the rights of the trustees. The present members of the committee (so to describe them for brevity) are trustees in either event: in the event of impracticability being shown, they are trustees for the subscribers; if, on the other hand, impracticability is not shown, they still have to carry out the trust. In either event they are entitled to their proper costs, charges and expenses as trustees.

The Chief Court, on the evidence before it, has held it impracticable to carry out the scheme above referred to. Their attention seems not to have been called to a difficulty in making such a finding in the circumstances of the case. In the view of the committee they were entitled to make a *cy pres* application of the funds in their hands and they conceived it right to do that without any recourse to the Court and apparently they had abandoned the original scheme. Their Lordships must express the opinion that they had no right to take either course: they could not abandon the scheme, because that was not a matter in their power at all; nor could they without recourse to the Court make a *cy pres* application on the ground that there was a general charitable intent, even if that view had been a correct one. It was doubtless largely owing to this apparent abandonment that the Chief Court was led into making the finding that the scheme had become impracticable. There was, however, the serious difficulty of an absence of parties. On one view, namely, that the scheme is not impracticable, there was nobody properly speaking representing the charity; on the other view, that the scheme has become impracticable, the subscribers, other than the plaintiff, were (subject of course to differences in amounts) just as much interested as the plaintiff, and they were not present. The finding of the Chief Court would not be binding upon persons who were not present; and what is still more serious is this that if other subscribers or somebody representing the charity were present, there is a possibility of further evidence being given upon which the Chief Court, or any other tribunal, might come to a different conclusion. In England it is well settled that in such a case the Attorney-General, who is a perfectly disinterested person, is a necessary party before it can be determined that a charitable scheme has become impracticable. The committee in the present case can hardly be said properly to have represented the charity, inasmuch as they had from an early date taken an incorrect view as to their powers.

Their Lordships have been unwilling to allow these expensive proceedings to be abortive or in the result unsatisfactory; and they have come to the conclusion that the better course is that there should be inquiries with proper parties representing both the interests of the charity and the other subscribers. In taking that course, their Lordships do not wish it to be taken that they have expressed in any way a view different from that of the Chief Court on the existing evidence as to the scheme being impracticable. In their view, such a finding cannot properly be made in the absence of the various parties interested.

There is one other thing in regard to which perhaps a word should be said. The result of the decree of the Chief Court as it stands is that the appellants would ultimately be deprived as trustees of their costs, charges and expenses. They may however be able to justify not only the purchase of the site, but also the purchase of bricks as

expenses incurred in the furtherance of the original charitable trust. As to that, there has so far been no possibility of properly determining aye or no what sum it is that the trustees ought to be allowed.

With regard to the costs their Lordships think it right in all the circumstances, having regard to the difficulty of the case and the useful purpose to which this appeal has ultimately been put, that the costs of all parties up to and including the present appeal should be taxed and paid out of the trust fund.

Their Lordships deem it desirable to add one word with regard to impracticability. That means impracticable from a reasonable point of view. It includes not only the question of present lack of subscriptions and the virtual impossibility (if it is established) of getting sufficient subscriptions in the future to carry out the original charitable object as defined, but also any other reason which may have contributed to make the scheme impracticable.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

THE COMMISSIONER, LUCKNOW
DIVISION, PRESIDENT OF THE
MANAGING COMMITTEE KSHATTRIYA
COLLEGE, LUCKNOW

v.

THE DEPUTY COMMISSIONER OF
PARTABGARH AS MANAGER OF COURT
OF WARDS KALAKANKAR ESTATE

DELIVERED BY LORD MAUGHAM

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